

## Message Text

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ACTION AF-04

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FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 2419

C O N F I D E N T I A L SECTION 1 OF 2 GENEVA 7299

LIMDIS

FOR AF/W - FOLLOWING FOR AMB. CARTER'S CLEARANCE AND DISSEMINATION  
AS DESIRED.

E.O. 11652: GDS

TAGS: UN, SHUM

SUBJ: THE 29 THE SESSION OF THE SUB-COMMISSION ON THE PREVENTION OF  
DISCRIMINATION AND THE PROTECTION OF MINORITIES

SUMMARY

DURING THE 29TH SESSION OF THE SUB-COMMISSION ON THE PREVENTION OF  
DISCRIMINATION AND THE PROTECTION OF MINORITIES SEVERAL ISSUES  
EMERGED OR WERE ACCELERATED TO LEVELS WHICH COULD EVENTUALLY REDUCE  
THE EFFECTIVENESS OF ALL U.N. MACHINERY ESTABLISHED TO COMBAT HUMAN  
RIGHTS VIOLATIONS: REGIONAL PROTECTION AND THE ROLE OF NON-GOVERN-  
MENTAL ORGANIZATIONS WERE TWO OF THE MAJOR ISSUES. U.S. RATIFICA-  
TION OF THE TWO HUMAN RIGHTS COVENANTS AND THE OTTIONAL PROTOCOL  
EMERGED AS AN IMPORTANT CONCERN IF THE U.S.IS TO PLAY A MAJOR ROLE  
IN HUMAN RIGHTS ACTIVITIES IN THE FUTURE. THIS LATTER CONCERN IS  
PRESENTED IN A MEMO FROM JOHN CAREY, ALTERNATE U.S. MEMBER OF THE  
SUB-COMMISSION. END SUMMARY.

1. THE 29TH SESSION OF THE SUB-COMMISSION ON THE PREVENTION OF  
DISCRIMINATION AND THE PROTECTION OF MINORITIES ENDED ON A BITTER,  
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TENSE NOTE. THE SOVIET EXPERT, SMIRNOV FLAILED A NEWS CLIPPING

IN THE AIR WHICH ALLEGED THAT U.S. MEMBER WHITAKER BREACHED CONFIDENTIALITY BY PROVIDING INFORMATION TO THE LONDON TIMES ABOUT PRIVATE SUB-COMMISSION SESSIONS. THE U.K. EXPERT, ON THE OTHER HAND, CALLED FOR AN INVESTIGATION OF THE "MYSTERIOUS DISAPPEARANCE" OF THE USSR, THE GDR AND URUGUAY FROM THE TEXT OF THE SUB-COMMISSION REPORT WHERE EACH COUNTRY HAD BEEN LISTED AS VIOLATING HUMAN RIGHTS. THE DELETIONS OCCURRED WHILE THE SOVIET EXPERT WAS CHAIRMAN. SMIRNOV PRODUCED THE NEWS CLIPPINGS OUT OF FRUSTRATION. HE HAD LOST HIS FIGHT TO REMOVE FROM THE RECORD ANY REFERENCE TO HUMAN RIGHTS OF VIOLATIONS IN THE USSR.

2. THE EPISODE WARRANTS MENTION ONLY BECAUSE IT HIGHLIGHTS ONE OF THOSE RARE OCCASIONS WHERE THE SOVIET UNION WAS SPECIFICALLY NAMED BY ANOTHER MEMBER AS VIOLATING HUMAN RIGHTS. IN THIS SESSION THE SUB-COMMISSION WENT FURTHER THAN EVER BEFORE IN NAMING COUNTRIES WHICH HAVE BEEN LABELED GUILTY OF VARIOUS HR VIOLATIONS. SOUTH AFRICA, CHILE AND ISRAEL WERE NOT FORGOTTEN BUT ADDED TO THE LIST WERE UGANDA, URUGUAY, ARGENTINA AND BOLIVIA, AMONG OTHERS. THIS MAY OR MAY NOT LEAD TO A TREND, DEPENDING UPON THE FUTURE OF THE SUB-COMM. IF, HOWEVER, THE BODY REMAINS FUNCTIONAL ITS ROLE MAY BE CHANGED BECAUSE OF THESE FIRST STEPS TOWARD MORE OBJECTIVE STANDARDS FOR CITING COUNTRIES, NOT JUST POLITICAL ANIMOSITY.

3. ON THE OTHER HAND UNBIASED NAMING OF COUNTRIES COULD LEAD TO A KIND OF REGIONAL PROTECTION WHERE NO INVESTIGATIVE ACTION OR CORRECTIONS COULD BE MADE. TO A DEGREE THIS HAPPENED WITH THE LATIN AMERICAN COUNTRIES. MEMBERS FROM THAT REGION WERE VERY DEFENSIVE THROUGHOUT THE SESSION BECAUSE, IN ADDITION TO BOLIVIA, ARGENTINA, AND CHILE BEING ACCUSED OF TORTURE AND ALLEGED ASSASSINATIONS, NICARAGUA AND URUGUAY WERE CITED FOR PERPETRATING SLAVE-LIKE PRACTICES.

4. THIS REGIONAL DEFENSE COMPLEX WAS ALSO EXHIBITED BY MEMBERS FROM THE MIDDLE EAST WHEN THE SITUATION IN THE WESTERN SAHARA WAS TABLED IN A RESOLUTION. THE EGYPTIAN MEMBER, KHALIFA, LED OTHER MIDDLE EAST MEMBERS IN A SUCCESSFUL FIGHT AGAINST ANY MENTION OF SELF-DETERMINATION IN THE DOCUMENT. HE CONTENDED THAT SELF-DETERMINATION WAS A POLITICAL ISSUE AND, THEREFORE, SEPARATE FROM HUMAN RIGHTS.

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5. IF ATTITUDES OF REGIONAL DEFENSE OR PROTECTION SPREAD AND PROTECTORS ARE SUCCESSFUL IN PREVENTING INVESTIGATIONS, HUMAN RIGHTS VIOLATIONS COULD GROW BEYOND ANYTHING CURRENTLY IN EXISTENCE WITH NO WAY OF CORRECTING OR ELIMINATING THEM.

6. IT WOULD APPEAR FROM THESE SITUATIONS THAT SOME ACTION IS IN ORDER WHICH WILL LEAD MEMBER STATES TO PARTICIPATE IN THE

HUMAN RIGHTS COMMISSION AND ITS SUB-COMMISSIONS AS NATIONS  
OBJECTIVELY CONCERNED ABOUT THE RIGHTS OF ALL CITIZENS,  
REGARDLESS OF THEIR NATIONALITY OR LOCATION.

7. A CONTINUING MATTER OF CONCERN IN THE COMMISSION AND  
SUB-COMMISSION IS THE SLOW BUT PERSISTENT EFFORT TO ERODE THE  
ROLE OF NON-GOVERNMENTAL ORGANIZATIONS. FLAGRANT ATTEMPTS  
WERE MADE BY THE USSR AND IRANIAN EXPERTS TO SILENCE NGO'S  
DURING THE 29TH SUB-COMMISSION SESSION. IF SUCCESSFUL IN REDUCING  
OR ELIMINATING THESE ORGANIZATIONS TO A NON-ROLE, ANOTHER FORCE  
FOR ASSISTING IN THE PROTECTION OF HUMAN RIGHTS WILL HAVE  
BEEN LOST. IF THE U.S. BELIEVES THAT THE NGO'S CAN AND DO  
MAKE VALID CONTRIBUTIONS IN THIS ARENA THEN STEPS MUST BE  
TAKEN TO STOP THIS SLOW EROSION OF THEIR PARTICIPATION OF HR  
ACTIVITIES.

8. IT APPEARS FROM COMMENTS MADE BY SMIRNOV DURING THE SUB-  
COMMISSION MEETINGS THAT THE USSR HAS DECIDED ON THE NEW HUMAN  
RIGHTS COMMITTEE AS THE MAJOR VEHICLE FOR DEALING WITH ALL  
TYPES OF HUMAN RIGHTS VIOLATIONS. ONE INDICATOR WAS THE  
RESOLUTION WHICH SMIRNOV AND GANJI (IRAN) INTRODUCED WHICH  
WOULD DIMINISH THE EFFECTIVENESS OF ECOSOC RES 1503. UNLESS  
DEFEATED AS IT IS MOVED THROUGH THE U.S. MACHINERY THIS  
IRANIAN/SOVIET RES WILL REDUCE THE SUB-COMMISSION TO A BODY OF  
EXPERTS WHO CAN ONLY TALK TO EACH OTHER ABOUT THE SAD SITUATIONS  
IN THE AREA OF HUMAN RIGHTS.

9. IN ADDITION TO HIS RESOLUTION SMIRNOV CNONTENDED THAT SEVERAL  
FUNCTIONS NOW THE RESPONSIBILITY OF THE SUB-COMMISSION SHOULD  
BE PLACED UNDER THE AEGIS OF THE HUMAN RIGHTS COMMITTEE I.E.  
SLAVERY AND SLAVE-LIKE PRACTICES.

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ACTION AF-04

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FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 2420

C O N F I D E N T I A L SECTION 2 OF 2 GENEVA 7299

LIMDIS

FOR AF/W - FOLLOWING FOR AMB CARTER'S CLEARANCE AND DISSEMINATION  
AS DESIRED.

10. IF THEY ACHIEVE THEIR GOAL IT IS CONCEIVABLE THAT  
THE USSR AND OTHER EASTERN BLOC COUNTRIES COULD DOMINATE  
ALL ACTIONS RELATING TO HUMAN RIGHTS VIOLATIONS AND CITE  
FOR INVESTIGATION ONLY THOSE COUNTRIES THAT THE SOVIETS DEEM  
WORTHY OF THE DISTINCTION.

11. THE U.S. CAN FIGHT TO PRESERVE THE SUB-COMMISSION AND  
ITS FUNCTIONS, OR WE CAN RATIFY THE TWO HUMAN RIGHTS COVENANTS  
AND THE OPTIONAL PROTOCOL WHERE WE CAN EXERT A MODIFYING  
EFFECT ON THE USSR. OR WE CAN DO BOTH. BUT ACTION IS  
WARRANTED AND CONSIDERATION SHOULD BE GIVEN TO THIS PROBLEM  
IN THE NEAR FUTURE.

12. JOHN CAREY, ALTERNATE U.S. EXPERT TO THE SUB-COMMISSION,  
CITIES REASONS WHY THE U.S. SHOULD RATIFY THE COVENANTS. HIS  
THINKING ON THE SUBJECT FOLLOWS:

QUOTE A. IT IS CLEAR AT THE 29TH (1976) SESSION OF THE  
SUBCOMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION  
OF MINORITIES THAT THE RECENT COMING INTO EFFECT OF THE TWO  
HUMAN RIGHTS COVENANTS AND THE OPTIONAL PROTOCOL HAS CREATED  
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A NEW SITUATION IN WORLD AFFAIRS. NOT ONLY IS THE LEGAL  
ORDER GREATLY CHANGED (FOR THOSE RATIFYING) BUT ALSO  
INEVITABLY THERE IS A NEW AWARENESS OF THE LEGITIMACY OF THE  
INTERNATIONAL COMMUNITY'S INVOLVEMENT IN RELATIONS BETWEEN  
GOVERNMENTS AND THEIR CITIZENS.

B. THE SAME WAS TRUE BEFORE TO A LESSER EXTENT BY VIRTUE OF  
THE EFFECTIVENESS SINCE 1969 OF THE CONVENTION  
ON ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION.  
HOWEVER IT HAS NOT BEEN RATIFIED BY STATES LIKE SOUTH AFRICA  
WHERE THE PROBLEM IS MOST ACUTE, SO ITS CAPACITY OF PRODUCING  
SUCH A NEW SITUATION WAS LIMITED. THE COVENANTS COVER THE  
WHOLE RANGE OF HUMAN RIGHTS, AND EVERY STATE PARTY IS LIKELY  
TO HAVE NUMEROUS COMPLIANCE PROBLEMS.

C. FAILURE BY THE U.S. TO RATIFY THE RACIAL DISCRIMINATION  
CONVENTION HAS BEEN EMBARRASSING AT PRIOR SUBCOMMISSION  
SESSIONS, BUT NOT ACUTELY SO BECAUSE OUR SOCIETY'S EFFORTS

TO IMPROVE, AND THE DEGREE OF ITS PROGRESS, WERE FAIRLY WELL KNOWN AMONG THOSE ATTENDING. I SENSE THAT, AS THE COVENANT'S MACHINERY BEGINS TO TAKE HOLD BEGINNING THIS FALL, OUR EMBARRASSMENT WILL BE GREATER.

D. THE REASON IS THE FOLLOWING. WE CAN IN EFFECT SAY TO STATES PARTIES TO THE RACE CONVENTION THAT THEY ARE DILLETANTES IN THAT FIELD, PLAYING GAMES BEHIND THE LINES WHILE WE ARE UP FRONT ACTUALLY COPING. IT IS DIFFERENT WITH THE COVENANTS. THEIR SCOPE IS SO BROAD THAT NO COUNTRY, EVEN IF IT DECLINES TO RATIFY THE OPTIONAL PROTOCOL OR TO ALLOW GOVERNMENT COMPLAINTS UNDER ARTICLE 41, CAN BE WHOLLY SAFE IN RATIFYING. ALL EXPOSE THEMSELVES TO CRITICISM FOR BREACHES OF BINDING OBLIGATIONS EVEN IF THEY SHIELD THEMSELVES FROM ENFORCEMENT MEASURES.

E. SINCE OTHERS TAKE THIS RISK, HOW CAN WE EXPLAIN OUR FAILURE TO DO SO? BY POINTING TO OUR BILL OF RIGHTS? SO CAN MANY OTHERS. BY CLAIMING WE ALREADY COMPLY IN ALL RESPECTS? OBVIOUSLY NOT. WE END UP SIMPLY CLAIMING TO BE DIFFERENT IN THAT OUR RATIFICATION PROCESS REQUIRES AN INDEPENDENT LEGISLATURE'S APPROVAL. THAT WON'T WASH UNLESS THE EXECUTIVE BRANCH MAKES AN ALL-OUT EFFORT TO GET THAT APPROVAL.

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F. I HAD FELT UNTIL A DISCUSSION THE OTHER DAY THAT TH COVENANTS HAD TO LINE UP IN BACK OF THE CONVENTION, WHICH BEING ITSELF BEHIND THE GENOCIDE PACT, WOULD BE RATIFIED IN MY DOTAGE. ON REFLECTION, I AM NOW INCLINED TO VIEW THINGS DIFFERENTLY. IT MIGHT WELL BE THAT THE COVENANTS (WITH WUITABLE RESERVATIONS) MIGHT BE EASIER TO SELL TO THE SENATE. CERTAINLY THE GREATER DETRIMENT TO U.S. POSTURE FROM NON-RATIFICATION OF THE COVENANTS JUSTIFIES THE ATTEMPT. UNQUOTE.CATTO

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## Message Attributes

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